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JUN 27 2007

OFFICE OF PETITIONS

In re Application of	:
Gaskins, Ford, Moore-Smith,	: DECISION REFUSING STATUS
O'Leary, Wilson, and	: UNDER 37 CFR 1.47(a)
Wolfenbarger	:
Application No. 10/732799	:
Filed: 12/11/2003	:
Attorney Docket No.	:
105916.167US1	:

This is in response to the petition under 37 CFR 1.47(a) filed on 17 August, 2004.

The Office apologizes for the delay in responding to the present petition and regrets any inconvenience to petitioners.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 11 December, 2003, without an executed oath or declaration. Accordingly, on 17 March, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application, requiring the statutory basic filing fee, an executed oath or declaration and a surcharge for their late filing, and additional claim fees. A two (2) month period for reply was set.

In response, on 17 August, 2004, a petition under 37 CFR 1.47(a), petition fee, surcharge, the basic filing fee and additional claim fee(s), and a three (3) month extension of time and fee were filed. A declaration naming Barton D. Gaskins, Louis Ford, Debra Moore-Smith, Robert K. O'Leary, Anne Wilson, and Lloyd Wolfenbarger, Jr., as joint inventors, signed by all inventors except non-signing inventor Moore-Smith, was also filed.

Petitioners assert that joint inventor Moore-Smith cannot be located after diligent effort. Petitioners aver that a copy of the declaration and assignment was mailed to the non-signing inventor's last known address, but that the envelope containing the declaration and assignment was returned as undeliverable.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1).

In regards to item (1), petitioners have not shown that diligent efforts have been made to locate the non-signing inventor.¹ Specifically, the showing of record is that a single mailing was made to the non-signing inventor's last known address, but that no further efforts were made to locate the non-signing inventor after the letter was returned as undeliverable.

¹ MPEP 409.03(d).

While petitioners have shown, via the declaration of registered patent attorney Belinda M. Lew, Ph.D., that a copy of the application was sent to the non-signing inventor and was returned as undeliverable, petitioners have not provided corroborating evidence of diligent efforts to locate the non-signing inventors. In this regard, it is noted that a brief Internet search reveals that the non-signing inventor may now be living in Durham, NC. Petitioners should provide details, in a renewed petition, of the efforts made to locate the non-signing inventor. Statements should be provided by persons with first-hand knowledge of the details.

If a new address is located for the non-signing inventor, a copy of the application (specification, including the claims, drawings, if any, and the declaration) should be sent to the non-signing inventor's address with a request that the inventor sign and return the declaration. If the non-signing inventor refuses to sign the declaration, petitioners should provide proof of that refusal. Statements should be provided by persons with first-hand knowledge of the details. If the non-signing inventor refuses in writing, a copy of the written refusal should be provided.

If repeated attempts to contact the non-signing inventor by telephone, mail, and e-mail are unsuccessful, petitioners will have established that despite diligent efforts, the non-signing inventor could not be reached.

The address in the petition is different than the correspondence address. A copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building

401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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